HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the Case.

W.P.No.929/04 m/s
Jagdish Prasad
S/o Late Sh. Pitamber Dutt
vs
Purnanand
S/o Lates Sh. Kali Ram Valim
and others.

Approved for reporting

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~~Not approved for reporting~~

Date of decision 29.9.2004

Initial of Judge

HIGH COURT OF UTARANCHAL AT NAINITAL

Writ Petition No. 929 (M/S) of 2004

Jagdish Prasad
S/o Late Sh. Pitamber Dutt
Chamoli and others. ..... Petitioners

Vs

Purnanand
S/o Late Sh. Kali Ram Valim
And others. ..... Respondents.

Counsel for the petitioner Sh. Siddharth Sah
Sh. Pramod Aggarwal Counsel for the respondents.

Dated:- 29-9-2004

Hon'ble Rajesh Tandon J.

Heard Sh. Siddharth Sah learned counsel for the petitioners and Sh. Pramod Aggarwal Counsel for the respondents.

By the present writ petition the petitioners have prayed for the issue of a writ, order or direction in the nature of certiorari, quashing the orders dt. 26-8-2002 and 17-6-2004 passed by the Civil Judge (S.D) Tehri and District Tehri respectively.

Briefly stated the petitioners are residents of Village Talla Dobra Patti Sarjula, District Tehri Garhwal and the petitioners are having irrigated land, which they have inherited from their ancestors, but today the position is that the irrigated land has turned into un-irrigated land. Water is not being released towards the petitioners field and has been blocked by the other people of the other village, where as the other people was entered into the compromise entitling the petitioners to get water for 6 hours in a day.

Petitioners have submitted that in a year1953. The suit bearing civil suit No. 105 of 1953 was instituted by Pitambar Dutt (Father of the petitioner No.1 and 2) and other villagers regarding the same water problem, which was decided on 30-8-1962 by Munsif Tehri Garhwal. Civil appeal No.34 of 1962 was filed by Sh. Bachan Singh against the order dt. 30-8-1962. The appeal was partly allowed, modifying the decree to the following effect:-

> *"The appeal is partly allowed. The judgment and decree of learned Munsif is modified. The plaintiffs will be entitled to turns i.e on one day (24 hours) after every four days, during the period 1st October to 30th June every year .The parties will also be entitled to take water from the Letigad stream for drinking purposes only irrespective of the turns fixed. The suit is decreed in terms of compromise dated 26-5-1960 paper No. 102Ka filed by Gulab Singh and Sridhar Plaintiffs and the compromise dt. 14-3-1963 paper no. 162 filed by pitamber datt respondent which shall form part of the decree. In the circumstances of the case the parties will bear their own cost of this court."*

Petitioners have also submitted that on 25-5-1960, a compromise was entered between Gulab Singh and Sridhar (plaintiffs of suit No. 105/53) and Bachan Singh and others in which the parties have agreed that the water will be available in turns. Thereafter on 14-3-1963 in the Appeal filed by Bachan Singh and others another compromise was entered into between Bachan Singh (Appellant) and Pitamber Dutt (Father of the petitioner No.1 and 2) before the Appellate Court in

which it was clearly stated that the excess water from Letigad gool would be used by Pitambar for irrigation and the appellants ie. Bachan Singh and others will not make any permanent construction of wall to block water of the stream.

Petitioners have stated that they were regularly getting water in accordance with the terms of the compromise. On 19-11-2001 the respondent No.1 (Purnanand) had threatened for the facilities of water and thereafter the present suit was filed where the injunction application was filed under Order 39 Rule 1 of the Code of Civil Procedure.

The learned Civil Judge vide his order dt. 26-8-2002 has rejected the injunction application. On appeal preferred by the petitioners the appeal was rejected, the order passed by the appellate court is quoted below;-

> *" I have heard the learned counsel for the parties and have gone through the record and perused the impugned order of the learned Civil Judge. Admittedly, the plaintiff/appellants are heirs of Pitamber Dutt. Admittedly the Civil Appeal No. 34 /62 (T) Bachan Singh Vs. Pitamber Dutt was decided in terms of the compromise dt. 14-3-1963, which has been form part of the decree. From perusal of that compromise paper whose certified copy is available on record it is evident that Pitamber Dutt has agreed that whatever unused water is left can be unilize by him and his irrigation will be done by that left water. Thus as per Pitamber Dutt has left water will be the source of his irrigation and he will have no objection nor other would have any objection. Now to discard that compromise by the heirs*

of the Pitamber Dutt would not be said a proper act on the part of the plaintiff/appellant. Certainly, the plaintiff/appellant being the heirs of the Pitamber Dutt are bound by the said compromise, which has become final and has not been turned down by any competent Court. As such the learned Civil Judge has rightly came to the conclusion that plaintiff/Appellant cannot get them separated from the compromise and they cannot ask more than the scope and purview of the compromise. As such no interference is needed."

A perusal of the order passed by the two courts below shows that while granting injunction under Order 39Rule 1 of the Code of Civil Procedure, the courts below were required to look into prima-facie case between the parties.

To deprive the petitioners by the order dt. 30-9-1963 by which the petitioners were permitted to use the water 1 day (24hrs) after every 4 days shows the irreparable injury to the petitioners.

The Apex Court has observed that the water is a gift of nature and the petitioners cannot be deprived.

In Delhi Water Supply and Sewarage Disposal Undertaking and another Vs. State of Haryana and othes 1996 Vol.2 SCC 572, it has been held as under:-

"*Water is a gift of nature. Human hand cannot be permitted to convert this bounty into a curse, oppression. The primary use to which water is put being drinking, it would be mocking nature to force the people who live on the bank of river to remain thirsty, whereas others*

incidentally place in an advantageous position are allowed to used the water for no-drinking purposes. A river has to flow through some territory; and it would be travesty of justice if the upper-riparian States were to use its water for purposes like irrigation, denying the lower-riparian States the benefit of using the water even for quenching the thirst of its residents.

" The plight of residents of Delhi in not getting sufficient water even for drinking, led Commodore S.D. Sinha to approach this Court under Article 32 of the Constitution by filing a public interest petition, which came to be registered ads Writ petition (C) NO. 537 of 1992 seeking, inter alia, a direction to the Governments concerned to maintain regular flow of water, in Yamuna River so that the residents of Delhi do not face the problem of drinking water, which, however, was being so faced because of non-release of sufficient quantity of water form Tajewala Head. As intricate questions of law were found to be involved, on the suggestion of the court, Commodore Sinha agreed to have the guidance and assistance of a senior lawyer through the Supreme Court Legal Aid Committee."

Since, the petitioners were deprived form the use of the water, the compromise was entered between the parties.

In view of the aforesaid fact, both the parties have agreed that during the pendency of the suit the order dt. 30-9-1963 may remain in operation.

Learned Civil Judge (J.D) is directed to expedite the hearing of the suit itself within a period of 9 months. Till the pendency of the suit the arrangement in pursuance of the compromise dt 30-9-1963 shall continue to operate.

Subject to the aforesaid observation, the writ petition is disposed of . No order as to costs.

Dated: - 29-9-2004 **(RAJESH TANDON J.)**

M.K.